

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1873 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ALKA N SHAH

Versus

STATE OF GUJARAT

Appearance:

MR MIHIR THAKOR FOR SINGHI & BUCH ASSO. for Petitioner
MR ND GOHIL, ADDL. PUBLIC PROSECUTOR for Respondent No. 1
MR PARESH M DAVE for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 03/05/2000

ORAL JUDGEMENT

1. Heard learned counsel for the respective parties.
Rule. Mr.N.D.Gohil, learned APP waives service of rule
for respondent No.1. Mr. Paresh Dave waives service of

rule for respondent No.2. On a joint request of learned counsel for the parties, this application is taken up for final hearing today.

2. This is an application u/s 482 of the Criminal Procedure Code at the instance of original accused No.1, in a complaint filed by the respondent No.2 in respect of an offence alleged to have been committed u/s 138 of the Negotiable Instruments Act read with section 141 of the said Act.

3. The short facts which are relevant for the purpose of present decision are not in dispute. The second respondent herein - original complainant had placed fixed deposit with the company by the name of M/s Piramal Financial Services Ltd., wherein the present applicant - accused No.1 was Managing Director. The company had issued four cheques by way of repayment of this fixed deposit. These four cheques were issued in the name of the original complainant, and were drawn on the account of the company under the signature of accused No.1. It is however pertinent to note that the applicant - accused No.1 had not drawn such cheques in her personal capacity, but in her capacity as Managing Director of the said company.

3.1 It is also pertinent to note that the cheques were issued sometime before February 1999, but were postdated whereby the due date was 13th July 1999 in order to obtain the corresponding date when the deposit would mature.

3.2 The present applicant resigned from the company, both as Director as well as Managing Director by resignation dated 27th January 1999. This is evidenced by Form No.32 filed with the Registrar of Companies. It is contended that consequently the authority to issue cheques for and on behalf of the company also stood revoked. It is also pertinent to note that this resignation became effective before the due date of the cheques.

3.3 It is also pertinent to note that the complainant was informed by registered A.D. letter dated 10th May 1999, i.e. before due dates of the cheques, that there is a change in the management of the company, and consequent to the change in management, the bankers of the company have effected changes in the authorised signatories to the cheques issued by the company, and that therefore, the cheques issued by way of repayment of the deposit dated 31st July 1999 should be exchanged by

fresh cheques signed by the duly authorised signatories, before the due date. It does not appear that the complainant took any action for obtaining fresh cheques as was intimated to her.

3.4 The original cheques dated 31st July 1999 were presented by the complainant for clearing through her bank on 30th November 1999, which were dishonoured. The complainant therefore issued a notice dated 9th December 1999 which notice was addressed to M/s Piramal Financial Services Ltd. through Mrs. Alka M. Shah, Managing Director. Ultimately, the complainant filed a complaint before the learned Magistrate u/s 138 read with section 141 of the Negotiable Instruments Act, upon which the learned Magistrate issued summons.

3.5 The present application is for the purpose of quashing the process issued as well as for quashing the complaint in question.

4. The short contention raised on behalf of the present applicant [accused No.1] is that even according to the complainant, the offence is committed by the company and the accused No.1 is only liable on account of her position as Managing Director of the company. On a plain reading of section 141 of the Negotiable Instruments Act, it becomes obvious that every person "at the time the offence was committed, was in charge of and was responsible to the company" shall be deemed to be guilty of the offence..... On the facts of the case, it is an admitted position that the offence was committed [u/s 138] when the cheques were dishonoured, and when a notice of dishonour was issued u/s 138. This occurred in November and December of 1999, whereas the applicant had resigned both as Director and Managing Director of the company as early as on 27th January 1999. It could not therefore possibly be urged that the applicant was in any manner in charge of or responsible to the company, at the time the offence was committed.

5. Another aspect of the matter is as to precisely when the offence came to be committed. It is obvious that the offence could only be committed on the presentation of the cheques on due dates, on the dishonour of the cheques, and the consequential notice being issued u/s 138 of the said Act. It is not possible to contend that the offence could be said to have been committed on the dates when the cheques were issued irrespective of the due dates mentioned on the cheques. In this context, it would be relevant to refer to the observations made by the Supreme Court in the case of Sil

Imports, USA v/s Exim Aides Silk Exporters, Bangalore, reported in 1999[4] SCC 567. The Supreme Court in this decision has mainly dealt with the period of limitation for filing a complaint u/s 142[A], in the context of the facts where notice u/s 138 proviso [b] was given more than once. In this context, the Supreme Court held that the limitation period started running from the date of receipt of the first notice by the drawer, by discussing and deciding that the cause of action arose for the purpose of filing a complaint u/s 138, when the first notice is issued to the drawer and not complied with by the latter. The necessary implication which flows from this decision is, that it is the dishonour of the cheque, the issuance of the notice u/s 138, and the non-compliance thereof which furnishes the complainant with the cause of action. The same principle would apply in respect of the accrual of the cause of action against a company, which would be applicable to a company and its officers by virtue of section 141 of the said Act.

6. In the premises aforesaid, it is not possible to contend that any cause of action had accrued against the applicant, the Ex-Managing Director of the company, since the applicant held no position whatsoever with the company when the cause of action in fact accrued against the company.

7. In the premises aforesaid, to permit the prosecution to continue as against the applicant would amount to an abuse of process of the court. In my opinion, therefore, both the complaint, as also the process issued thereon require to be quashed and set aside. It is accordingly so found and directed.

8. Learned counsel for the second respondent original complainant contended that all these contentions could be raised before the trial Court in support of an application for discharge. In my opinion, when the contentions are clear, based on facts which are not in controversy, and the conclusion is equally clear from a very plain reading of the statute, and when the question is already open before this Court, it is neither necessary nor just to drive the applicant (at the final hearing stage of this application) back to the trial Court merely in order to repeat the very same contentions.

9. Accordingly, this revision is allowed and rule is made absolute.

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